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Attorneys for Plaintiff,
 Timothy Barrett and Shayan Kamrava

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

**TIMOTHY BARRETT and
 SHAYAN KAMRAVA,
 Individually And On Behalf Of All
 Others Similarly Situated,**

Plaintiffs,

v.

**WYNN LAS VEGAS, LLC; and
 WYNN RESORTS HOLDINGS,
 LLC, Nevada limited liability
 companies,**

Defendants.

Case No.: '16CV1138 BAS KSC

CLASS ACTION

**COMPLAINT FOR DAMAGES
 AND INJUNCTIVE RELIEF
 PURSUANT TO CALIFORNIA
 PENAL CODE SECTION 630 ET
 SEQ.**

JURY TRIAL DEMANDED

Plaintiffs TIMOTHY BARRETT and SHAYAN KAMRAVA (jointly the
 “Plaintiffs”), on behalf of themselves and the class of similarly situated
 individuals as defined below, alleges upon information and belief and
 investigation by counsel as follows:

INTRODUCTION

1. This class action lawsuit arises out of Defendants’ WYNN LAS
 VEGAS, LLC and WYNN RESORTS HOLDINGS, LLC’s (jointly “WYNN” or

1 “Defendants”) policy and practice of willfully employing and/or causing to be
2 employed certain recording equipment in order to record Defendants’ telephone
3 conversations with Plaintiffs without Plaintiffs’ knowledge or consent, in
4 violation of California Penal Code §§ 662 and 632.7, thereby invading Plaintiffs’
5 privacy.

6 2. Defendants’ policy and practice of recording telephone calls to and
7 from their telephonic room reservation’s department without the consent of all
8 parties violates California’s Invasion of Privacy Act (California Penal Code §§
9 630, *et seq.*). Specifically, Defendant’s policies and practices violate California
10 Penal Code § 632 (“Penal Code § 632”), which prohibits the recording of a
11 confidential communication made to a telephone without the consent of all parties
12 to the communication.

13 3. Defendants’ policy and practice of recording telephone conversations
14 without the consent of all parties violates California’s Invasion of Privacy Act
15 (California Penal Code §§ 630, *et seq.*). Specifically, Defendant’s policies and
16 practices violate California Penal Code § 632.7 (“Penal Code § 632.7”), which
17 prohibits the recording of a communication made to a cellular telephone without
18 the consent of all parties to the communication. Penal Code § 632.7 does not
19 require that the recorded communication be confidential.

20 4. WYNN has violated and continues to violate Penal Code §§ 632 and
21 632.7 by impermissibly recording confidential communications with California
22 residents, and/or by impermissibly recording communications regardless of their
23 nature with California residents while said residents are on cellular telephones,
24 without the consent of all parties to the communication.

25 **JURISDICTION AND VENUE**

26 5. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2)(A) because
27 Plaintiff Timothy Barrett is a resident of the State of California, County of San
28 Diego, and therefore is a citizen of a state different from each Defendant,

1 companies incorporated in Nevada, with their principal place of business in
2 Nevada. Plaintiff Shayan Kamrava is a resident of the State of California.
3 Plaintiffs also seek the greater of statutory damages of \$5,000 per violation or
4 three times actual damages per violation, pursuant to Penal Code 637.2(a), which
5 when aggregated among a proposed class number in the thousands, exceeds the
6 \$5,000,000 threshold for federal court jurisdiction. Therefore, both diversity
7 jurisdiction and the damages threshold under the Class Action Fairness Act of
8 2005 (“CAFA”) are present, and this Court has jurisdiction.

9 6. Venue is proper pursuant to 28 U.S.C. § 1391 for the following
10 reasons: (1) Plaintiff Timothy Barrett resides in the County of San Diego, State of
11 California, which is within this judicial district; (2) the conduct complained of by
12 Plaintiff Timothy Barrett herein occurred within this judicial district and within
13 the State of California; and (3) Defendants conducted business within this judicial
14 district at all times relevant.

15 PARTIES

16 7. Plaintiff Timothy Barrett (“Ms. Barrett”) is an individual residing in
17 the State of California.

18 8. Plaintiff Shayan Kamrava (“Mr. Kamrava”) is an individual residing
19 in the State of California.

20 9. Upon information and belief, Plaintiffs allege that WYNN LAS
21 VEGAS, LLC and WYNN RESORTS HOLDINGS, LLC are each a Nevada
22 limited liability company with their principal place of business located at 3131 S
23 Las Vegas Boulevard, Las Vegas, NV 89109.

24 10. Plaintiffs are informed and believe, and thereon allege, that WYNN
25 LAS VEGAS, LLC is, and at all times mentioned herein was, a company with its
26 principal place of business in Las Vegas, Nevada and a limited liability company
27 in Nevada. It is in the business of hotel hospitality and operates a casino in the
28 United States. Defendant has a policy and practice of recording conversations with

1 the public, including California residents. Defendants' employees and agents are
2 directed, trained and instructed to, and do, record cellular telephone conversations
3 with the public, including California residents.

4 11. Plaintiffs are informed and believe, and thereon allege, that WYNN
5 RESORTS HOLDINGS, LLC is, and at all times mentioned herein was, a
6 company with its principal place of business in Las Vegas, Nevada and a limited
7 liability company in Nevada. It is in the business of hotel hospitality and operates
8 a casino in the United States. Defendant has a policy and practice of recording
9 conversations with the public, including California residents. Defendants'
10 employees and agents are directed, trained and instructed to, and do, record
11 cellular telephone conversations with the public, including California residents.

12 **FACTUAL ALLEGATIONS**

13 12. At all times relevant, Plaintiffs are individuals residing within the
14 State of California.

15 13. In or about May of 2016, and while Mr. Barrett's residence was in
16 the State of California and while Mr. Barrett was physically present in the State of
17 California, Mr. Barrett had at least one telephone communication on his cellular
18 telephone ending 8824 in which he inquired about room rates for a future event.
19 Mr. Barrett was present in California at the time of the call to WYNN.

20 14. The telephone call with the representative of WYNN lasted for
21 several minutes.

22 15. After speaking with a representative for at least approximately two
23 minutes, Mr. Barrett inquired whether the call was being recorded, and the
24 representative indicated that that call was being recorded.

25 16. The telephone number that Mr. Barrett called was 877-321-9966.

26 17. WYNN did not notify Mr. Barrett that the call was recorded at the
27 outset of the call, nor did Defendant obtain Mr. Barrett's consent.

28 18. Mr. Barrett did not hear any intermittent beeping sounds during the

1 call that may have possibly alerted Mr. Barrett to Defendants' recording of the
2 call.

3 19. In or about April of 2016, and while Mr. Kamrava's residence was in
4 the State of California and while Mr. Kamrava was physically present in the State
5 of California, Mr. Kamrava had at least one telephone communication on his
6 cellular telephone ending 9045 in which he provided confidential information to
7 Defendants in the process of making a reservation for a hotel room. The requested
8 items of information required by Defendants during the reservation process
9 included without limitation Plaintiff's name, address, telephone number, and
10 complete credit card information. Mr. Kamrava was present in California at the
11 time of the call to Defendants.

12 20. The telephone call with the representative of Defendants lasted
13 approximately eleven minutes.

14 21. Towards the end of the call, Mr. Kamrava inquired whether the call
15 may have been recorded for some reason, and the male representative stated that
16 WYNN records all calls.

17 22. The telephone number that Mr. Kamrava called was 877-770-7804.

18 23. WYNN did not notify Mr. Kamrava that the call was recorded at the
19 outset of the call, nor did Defendants obtain Mr. Kamrava's consent.

20 24. Mr. Kamrava did not hear any intermittent beeping sounds during the
21 call that may have possibly alerted Mr. Kamrava to Defendants' recording of the
22 call.

23 25. Plaintiffs allege on information and belief that, during the twelve
24 months preceding the filing of this complaint, Defendants as a company practice,
25 routinely recorded incoming and outgoing telephone communications with
26 customers who resided in and were physically present in the State of California
27 without notifying the customers that the communications were being recorded.

28 26. Defendants' practice of secretly recording telephone communications

1 violates Cal. Penal Code section 630 et seq., including without limitation Cal.
2 Penal Code sections 632 and 632.7.

3 27. Plaintiffs had no reason for suspecting that any of their cellular
4 telephone conversation/s with Defendants would be recorded. Had Plaintiffs
5 known that the conversations would be recorded, Plaintiffs would not have given
6 consent, nor divulged his personal and/or highly confidential information over the
7 phone.

8 28. Plaintiffs found Defendants' clandestine recording to be highly
9 offensive. Because there was no warning that calls would be recorded or
10 monitored, Plaintiffs had a reasonable expectation that his telephone conversations
11 with Defendants were private and confined to the parties on the telephone. The
12 recording, monitoring, and/or eavesdropping upon the calls without Plaintiffs'
13 consent is highly offensive to Plaintiffs and would be highly offensive to a
14 reasonable person, including members of the proposed Class.

15 29. Defendants' recording of the conversation/s with Plaintiffs without
16 Plaintiffs' knowledge or consent caused harm and damage to Plaintiffs. Prior to
17 Plaintiffs' inquiry on the matter, Plaintiffs were never informed that his cellular
18 telephone conversation with WYNN was being recorded. At no time during the
19 call did Plaintiffs give consent for the call with Defendants to be monitored,
20 recorded, and/or eavesdropped on.

21 30. Upon information and belief, Plaintiffs allege that during the relevant
22 time period, Defendants had had a policy and practice of recording telephone
23 conversations. Defendants' employees and agents are directed, trained, and
24 instructed to, and do, record cellular telephone conversations with the public,
25 including Plaintiffs and other California residents.

26 31. Upon information and belief, Plaintiffs allege that during the relevant
27 time period, Defendants have had all of its calls to the public, including those
28 made to California residents, recorded without the knowledge or consent of the

1 public, including Plaintiffs and other California residents.

2 32. Defendants' conduct violated the public's right to privacy, including
3 the rights of Plaintiffs and other California residents, and constitutes a violation of
4 Penal Code § 632.7.

5 **CLASS ACTION ALLEGATIONS**

6 33. Plaintiffs bring this action on behalf of themselves and all others
7 similarly situated (the "Class").

8 34. Plaintiffs represent, and are members of, the Class, which is defined
9 as follows:

10 All persons in California whose cellular telephone
11 conversations with Defendants were recorded without
12 their consent or knowledge by Defendants within one
13 year prior to the filing of this action.

14 35. Defendants, their employees, and its agents are excluded from the
15 Class.

16 36. The Class that Plaintiffs seek to represent contains numerous
17 members and is clearly ascertainable including, without limitation, by using
18 Defendants' records and/or Defendants' telephone company's or other telephone
19 service provider's records to determine the size of the Class and to determine the
20 identities of individual Class members. Plaintiffs reserve the right to expand or
21 modify the Class definition as warranted as facts are revealed through further
22 investigation and discovery.

23 37. By its unlawful actions, WYNN has violated Plaintiffs' and the
24 Class's privacy rights under California's Invasion of Privacy Act, specifically,
25 Penal Code §§ 632 and/or 632.7. The questions raised are, therefore, of common
26 or general interest to the Class, who have a well-defined community of interest in
27 the questions of law and fact raised in this action.

28 38. Plaintiffs' claims are typical of those of the Class, as Plaintiffs now

1 suffer from the same violations of law as other putative Class members. Plaintiffs
2 have retained counsel with substantial experience in prosecuting complex
3 litigation and class actions to represent him and the Class, and Plaintiffs will fairly
4 and adequately represent the interests of the Class.

5 39. This action may properly be maintained as a class action because
6 there is a well-defined community of interest in the litigation and the proposed
7 Class is ascertainable.

8 **Numerosity**

9 40. Plaintiffs do not know the number of members in the Class, but based
10 on information and belief, believes the Class consists of at least one thousand
11 individuals, making joinder of individual cases impracticable.

12 **Typicality**

13 41. Plaintiffs' claims are typical of the claims of all the other Class
14 members. Plaintiffs' claims and the Class members' claims are based on the same
15 legal theories and arise from the same unlawful conduct, resulting in the same
16 privacy injury to Plaintiffs and to all the other Class members.

17 **Common Questions of Law and Fact**

18 42. There are questions of law and fact common to the Class that
19 predominate over any questions affecting only individual Class members. Those
20 common questions of law and fact include, without limitation, the following:

- 21 a. Whether Defendants had a policy of recording and/or monitoring
22 incoming and/or outgoing calls made to and/or from cellular telephones;
- 23 b. Whether Defendants disclose to callers and/or obtains their consent that
24 their incoming and/or outgoing cellular telephone conversations with
25 Defendant are being recorded;
- 26 c. Whether Defendants' policy of recording incoming and/or outgoing calls
27 constitutes a violation of Cal. Penal Code section 630 et seq., including
28 without limitation Sections 632 and 632.7;

- d. Whether Defendants' policy of recording incoming and/or outgoing calls constitutes an invasion of privacy;
- e. Whether Plaintiffs and the Class are entitled to statutory damages of \$5,000 per violation of Penal Code § 632.7 under Penal Code § 637.2;
- f. Whether Plaintiffs and the Class are entitled to statutory damages of \$5,000 per violation of Penal Code § 632 under Penal Code § 637.2;
- g. Defendants' recordkeeping practices;
- h. Whether Defendants should be enjoined from engaging in such conduct in the future;
- i. The appropriate remedies for Defendants' conduct.

Adequacy

43. Plaintiffs will fairly and adequately represent and protect the interests of the other Class members. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the other Class members and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the other Class members.

Superiority

44. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Even if every individual Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts if individual litigation of the numerous cases were to be required. Individualized litigation also would present the potential for varying, inconsistent, or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual

1 issues. By contrast, conducting this action as a class action will present fewer
2 management difficulties, conserve the resources of the parties and the court
3 system, and protect the rights of each Class member. Further, it will prevent the
4 very real harm that would be suffered by numerous putative Class members who
5 will be unable to enforce individual claims of this size on their own, and by
6 Defendant's competitors, who will be placed at a competitive disadvantage
7 because they chose to obey the law. Plaintiffs anticipate no difficulty in the
8 management of this case as a class action.

9 45. The prosecution of separate actions by individual Class members
10 may create a risk of adjudications with respect to them that would, as a practical
11 matter, be dispositive of the interests of other Class members not parties to those
12 adjudications, or that would otherwise substantially impair or impede the ability of
13 those non-party Class members to protect their interests.

14 46. The prosecution of individual actions by Class members would
15 establish inconsistent standards of conduct for Defendants.

16 47. Defendants have acted or refused to act in ways generally applicable
17 to the Class, thereby making appropriate final and injunctive relief or
18 corresponding declaratory relief with regard to members of the Class as a whole.
19 Likewise, Defendants' conduct as described above is unlawful, is capable of
20 repetition, and will continue unless restrained and enjoined by the Court.

21 **FIRST CAUSE OF ACTION**

22 **Violation of Cal. Penal Code Section 632**

23 **[Brought By Plaintiff Shayan Kamrava]**

24 48. Plaintiffs repeat and incorporate by reference the allegations set forth
25 above as though fully stated herein.

26 49. Californians have a constitutional right to privacy. Moreover, the
27 California Supreme Court has definitively linked the constitutionally protected
28 right to privacy with the purpose, intent, and specific protections of the California

1 Invasion of Privacy Act, including Penal Code § 632. As the California Supreme
2 Court has stated, “California’s explicit constitutional privacy provision (Cal.
3 Const., art. I, § 1) was enacted in part specifically to protect Californians from
4 overly intrusive business practices that were seen to pose a significant and
5 increasing threat to personal privacy.” *Kearny v. Salomon Smith Barney, Inc.*
6 (2006) 39 Cal. 4th 95, 39-40. Therefore, it is evident that California has a strong
7 and continuing interest in the full and vigorous application of the provisions of
8 Penal Code § 632 prohibiting the recording of telephone conversations involving a
9 cellular telephone without the knowledge or consent of all parties to the
10 conversation.

11 50. Plaintiffs allege on information and belief that, within the applicable
12 statute of limitations, Plaintiffs and the Class members, while residing in and
13 physically present in the State of California, participated in telephone
14 communications with a live representative of Defendants, which communications
15 were secretly recorded by Defendant without the consent of Plaintiffs and the
16 Class members. Defendants did not notify Plaintiff and the Class members that the
17 communications were being recorded at the onset of the call.

18 51. Plaintiff Shayan Kamrava and the Class members had an objectively
19 reasonable expectation that their telephone communications were confidential and
20 were not being recorded. There were no beeps, warnings, or recording disclosures
21 played that would lead Plaintiff Shayan Kamrava and the Class members to
22 believe that their communications were being recorded.

23 52. Cal. Penal Code section 632 prohibits the intentional recording of a
24 confidential communication without the consent of all parties to the
25 communication. Defendants violated Sections 632 and 632.7 by intentionally
26 recording confidential communications with Plaintiff Shayan Kamrava and other
27 Class members without obtaining their consent.

28 53. Upon information and belief, at all relevant times, Defendant had a

1 policy and practice of using a telephone system and/or recording equipment that
2 enabled them to surreptitiously record and/or monitor conversations between
3 Plaintiffs and Class members' telephone conversations with Defendants.

4 54. Upon information belief, at all relevant times, Defendants had and
5 followed a policy and practice of intentionally and surreptitiously recording and/or
6 monitoring Plaintiff Shayan Kamrava's and Class members' telephone
7 conversations with Defendant.

8 55. Upon information and belief, at all relevant times, Defendants had
9 and followed a policy and practice of not advising or warning Plaintiff Shayan
10 Kamrava or Class members that their cellular communications with Defendant
11 would be recorded and/or monitored. Because Defendants did not disclose to
12 Plaintiffs or Class members that their calls were being recorded and/or monitored,
13 Defendant did not obtain, and could not have obtained, Plaintiff Shayan
14 Kamrava's or Class members' express or implied advance consent to the
15 recording and/or monitoring of those conversations.

16 56. Defendants' conduct as described above violated Penal Code § 632.
17 Plaintiffs and Class members are entitled to, and below herein do pray for, their
18 statutory remedies and damages, including but not limited to those set for in Penal
19 Code § 637.2 and injunctive relief to halt the secret recording of communication.

20 57. Because this case is brought for the purposes of enforcing important
21 rights affecting the public interest, Plaintiff Shayan Kamrava and the Class seek
22 recovery of their attorney's fees pursuant to the private attorney general doctrine
23 codified in California Code of Civil Procedure § 1021.5, or any other statutory
24 basis.

25 **SECOND CAUSE OF ACTION**

26 **Violation of Cal. Penal Code Section 632.7**

27 **[Brought By Both Named Plaintiffs]**

28 58. Plaintiffs repeat and incorporate by reference the allegations set forth

1 above as though fully stated herein.

2 59. Californians have a constitutional right to privacy. Moreover, the
3 California Supreme Court has definitively linked the constitutionally protected
4 right to privacy with the purpose, intent, and specific protections of the California
5 Invasion of Privacy Act, including Penal Code § 632. As the California Supreme
6 Court has stated, “California’s explicit constitutional privacy provision (Cal.
7 Const., art. I, § 1) was enacted in part specifically to protect Californians from
8 overly intrusive business practices that were seen to pose a significant and
9 increasing threat to personal privacy.” *Kearny v. Salomon Smith Barney, Inc.*
10 (2006) 39 Cal. 4th 95, 39-40. Therefore, it is evident that California has a strong
11 and continuing interest in the full and vigorous application of the provisions of
12 Penal Code § 632.7 prohibiting the recording of telephone conversations
13 involving a cellular telephone without the knowledge or consent of all parties to
14 the conversation.

15 60. Plaintiffs allege on information and belief that, within the applicable
16 statute of limitations, Plaintiffs and the Class members, while residing in and
17 physically present in the State of California, participated in cellular telephone
18 communications with a live representative of Defendants, which communications
19 were secretly recorded by Defendant without the consent of Plaintiffs and the
20 Class members. Defendants did not notify Plaintiffs and the Class members that
21 the communications were being recorded at the onset of the call.

22 61. Plaintiffs and the Class members had an objectively reasonable
23 expectation that their telephone communications were confidential and were not
24 being recorded. There were no beeps, warnings, or recording disclosures played
25 that would lead Plaintiffs and the Class members to believe that their
26 communications were being recorded.

27 62. Cal. Penal Code section 632.7 prohibits the intentional recording of a
28 confidential communication without the consent of all parties where one of the

1 parties to the communication is using a cellular or cordless telephone. Defendants
2 violated Section 632.7 by intentionally recording cellular telephone
3 communications with Plaintiffs and other Class members without obtaining their
4 consent.

5 63. Upon information and belief, at all relevant times, Defendants had a
6 policy and practice of using a telephone system and/or recording equipment that
7 enabled them to surreptitiously record and/or monitor conversations between
8 Plaintiffs and Class members' telephone conversations with Defendants.

9 64. Upon information belief, at all relevant times, Defendants had and
10 followed a policy and practice of intentionally and surreptitiously recording and/or
11 monitoring Plaintiffs' and Class members' cellular telephone conversations with
12 Defendant.

13 65. Upon information and belief, at all relevant times, Defendants had
14 and followed a policy and practice of not advising or warning Plaintiffs or Class
15 members that their cellular communications with Defendant would be recorded
16 and/or monitored. Because Defendants did not disclose to Plaintiffs or Class
17 members that their calls were being recorded and/or monitored, Defendant did not
18 obtain, and could not have obtained, Plaintiffs' or Class members' express or
19 implied advance consent to the recording and/or monitoring of those
20 conversations.

21 66. Defendants' conduct as described above violated Penal Code §
22 632.7(a). Plaintiffs and Class members are entitled to, and below herein do pray
23 for, their statutory remedies and damages, including but not limited to those set
24 for in Penal Code § 637.2 and injunctive relief to halt the secret recording of
25 communication.

26 67. Because this case is brought for the purposes of enforcing important
27 rights affecting the public interest, Plaintiffs and the Class seek recovery of their
28 attorney's fees pursuant to the private attorney general doctrine codified in

1 California Code of Civil Procedure § 1021.5, or any other statutory basis.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiffs, on behalf of themselves and members of the
4 Class, pray for the following relief against Defendants and each of them:

- 5 a. An order certifying the Class and appointing named Plaintiffs as
6 representative of the Class, and appointing counsel for Plaintiffs as
7 lead counsel for the Class;
- 8 b. An order declaring that the actions of Defendants, as described
9 above, violate California Penal Code § 632;
- 10 c. An order declaring that the actions of Defendants, as described
11 above, violate California Penal Code § 632.7;
- 12 d. A judgment for and award of five thousand dollars (\$5,000.00) per
13 violation of California Penal Code §§ 632 and/or 632.7 to Plaintiff
14 and the members of the Class, pursuant to *inter alia* Cal. Pen. Code
15 § 637.2;
- 16 e. A preliminary and permanent injunction enjoining Defendants
17 from engaging in further conduct in violation of California Penal
18 Code § 630 *et seq.*;
- 19 f. Payment of costs of the suit;
- 20 g. Payment of attorney's fees under California Code of Civil
21 Procedure § 1021.5;
- 22 h. An award of pre- and post-judgment interest to the extent allowed
23 by law; and,
- 24 i. Any other further relief that the court may deem just and proper.

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DEMAND FOR JURY TRIAL

68. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Dated: May 11, 2016

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

BY: /s/ ABBAS KAZEROUNIAN

ABBAS KAZEROUNIAN, ESQ.

ATTORNEY FOR PLAINTIFF